



March 26, 2018

VIA ELECTRONIC FILING

(<https://foiaonline.regulations.gov/foia/action/public/request/publicPreCreate>)

RE: Request for records under the Federal Freedom of Information Act

Dear FOIA Officer:

In accordance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, the Sierra Club hereby requests access to and copies of specific public records¹ in the possession of the United States Environmental Protection Agency (“EPA”), including EPA’s Region III office, concerning the FirstEnergy Bruce Mansfield Power Station, located in Beaver County, Pennsylvania, as follows:

- I. Records (including but not limited to reports, assessments, and memoranda) concerning or related to the 1/10/18 fire at the Bruce Mansfield Power Station, potential damage to the facility caused by or following the fire, the status of any of the facility’s scrubbers post-fire, potential repairs or replacements of any of the facility’s scrubbers post-fire, and regulatory changes pursuant to the Clean Air Act that such repairs or replacements may require; and
- II. Records of communications (including but not limited to e-mails) between EPA and FirstEnergy Corp. and/or the Pennsylvania Department of Environmental Protection from 1/10/2018 through the present concerning or related to the 1/10/18 fire at the Bruce Mansfield Power Station, including correspondence related to the 1/10/18 fire, potential damage to the facility caused by or following the fire, the status of any of the facility’s scrubbers post-fire, potential repairs or

¹ As used throughout this letter, the terms “record” and “records” shall mean all materials in whatever form (handwritten, typed, electronic, or otherwise produced, recorded, reproduced or stored) in EPA’s possession, including, but not limited to, any correspondence, minutes of meetings, memoranda, notes, e-mails, notices, electronic files, internet chat logs, tapes, photos, videos, text messages, and telefaxes. Note that this request specifically seeks responsive records in or on the personal computers, cellphones, or other devices, or personal email accounts used by any federal employee or official if used for any government purpose.

replacements of any of the facility's scrubbers post-fire, and regulatory changes pursuant to the Clean Air Act that such repairs or replacements may require.

The above-requested records are reasonably described so as to permit EPA headquarters and EPA Region III to identify and locate the records. Although, as an outside party, we are unable to provide a list of potential custodians within EPA's headquarters and EPA's Region III office by specific name, courts have made it clear that Congress intended the "reasonably described" language to be interpreted liberally to allow public access to agency records and that the absence of a specific EPA sender/recipient/custodian is not grounds for the Agency to deny a FOIA request. In an effort to help identify those custodians within EPA who may have responsive records, Sierra Club points out that this request is specifically limited to a single stationary source in Pennsylvania (the FirstEnergy Bruce Mansfield Power Station), which is permitted under Title V of the Clean Air Act, the requested records are related to regulation of this source under the Clean Air Act, and concern a specific event (i.e., a January 2018 fire) at the power station. Relevant search terms would likely include: "Bruce Mansfield," "fire," "damage," "scrubber(s)," "flue gas desulfurization," "FGD," "repair(s)," "replacement(s)," "New Source Review," "NSR," "Prevention of Significant Deterioration," and "PSD."

It may be possible for us to further limit this request if we have a better idea of the nature and scope of the records in your files. Please contact me to discuss this possibility. In addition, to the extent that records responsive to this request are available in a widely-used electronic format (e.g., pdf, Excel, Word, or WordPerfect files), we would prefer to receive them in that format, provided that the electronic versions are in comprehensible form. In the instance that any of the requested records in electronic form are too large to provide via e-mail, the Sierra Club can provide a box.com link or other online dropbox, allowing for easy upload of the records to an electronic folder. Should such an electronic folder be infeasible, we are willing to coordinate with EPA on appropriate media for access to such files.

If you are able to provide some records more rapidly than others, we ask that you please forward those records as they become available for production. If you ultimately withhold any responsive records, please include in your response an explanation as to which records or portions of records, if any, are being withheld and please identify the privilege or exemption being asserted and the justification for that privilege or exemption. If a record includes both exempt and non-exempt information, please provide those portions of the record that are not specifically exempted from production. Finally, if a record does not exist, please indicate that in your written response.

Finally, in accordance with the FOIA, Sierra Club requests a waiver of all fees in connection with this request. FOIA carries a presumption of disclosure, and FOIA's fee waiver provision was designed specifically to allow for the disclosure of requested information that is in the public interest without the payment of fees if disclosure "is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in

the commercial interest of the requester.” *See* 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(1).

The Sierra Club is a nonprofit organization founded in 1892 that has grown to include over 830,000 members nationwide. The Sierra Club’s organizational mission is “to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth’s ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.” One of the most important elements of this mission is to educate people on the effects of air and water pollution on the environment and human health, and Sierra Club has a long history of involvement in activities related to air quality, coal-fired power plants, and the Bruce Mansfield Power Station.

The Sierra Club’s request for documents meets the two-pronged test for waiver of fees under FOIA. *See* 40 C.F.R. § 2.107(l)(2),(3). As to the first prong, disclosure of the requested records and information here is in the public interest because it will significantly contribute to the public understanding of the operations or activities of the government. Particularly, the subject of the requested records concerns federal regulation of a large stationary source of air and water pollution in Beaver County, Pennsylvania. *See* 40 C.F.R. § 2.107(l)(2)(i). The information sought by the Sierra Club is not currently in the public domain and has meaningfully informative value to the public in their understanding whether their health and well-being are being adequately protected from pollutants emitted from this large stationary source. *See* 40 C.F.R. § 2.107(l)(2)(ii). As such, the information will significantly contribute to the public’s understanding of EPA actions required under the Clean Air Act to protect the public from serious harms due to pollution emitted from this source. *See* 40 C.F.R. § 2.107(l)(2)(iii),(iv). The Sierra Club continuously works with volunteers nationwide to disseminate public and environmental health information about air emissions from Bruce Mansfield and other large coal-fired power plants. The Sierra Club’s unique ability to reach a large cross-section of the affected public, its intention to effectively convey the requested information to the public, and its knowledge and expertise of air pollution controls and coal-fired power plants, allows for the effective analysis and conveyance of the information to broad audience, thereby significantly contributing to the public understanding of air quality conditions in their community and of EPA’s activities to regulate the Bruce Mansfield Power Station to protect the public’s health and well-being.

As to the second prong, Sierra Club’s FOIA request also satisfies the requirement that the information is “not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(l)(3). As a nonprofit, the Sierra Club has no commercial, trade or profit interest in the material requested. The Sierra Club will not be paid for, nor receive other commercial or economic benefits from the publication or dissemination of, the requested materials. In short, it is clear that the Sierra Club’s FOIA request is “likely to contribute significantly to public understanding of the operations or activities of the government”

and “is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).
In this case, a fee waiver is appropriate.

Please feel free to e-mail me at zachary.fabish@sierraclub.org, or call me at (202) 675-7917, to discuss any aspect of this request. Thank you in advance for your assistance in this matter.

Sincerely,

/s/
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